



**In The Supreme Court of Bermuda**  
**CIVIL JURISDICTION**  
**2025: No. 90**

**B E T W E E N:**

**AMIR MIZRACHY**

*Applicant*

**-v-**

**THE GOVERNOR OF BERMUDA**

*First Respondent*

**and**

**THE JUDICIAL AND LEGAL SERVICES COMMITTEE (“JLSC”)**

*Second Respondent*

**RULING**

**Date of Hearing:** 10<sup>th</sup> November 2025

**Draft Circulated:** 18<sup>th</sup> August 2026

**Date of Ruling:** 9<sup>th</sup> September 2026

**Appearances:** The Applicant in Person  
Eugene Johnston<sup>1</sup> for the First Respondent  
Kevin Taylor & Luca del Panta<sup>2</sup> for the Second Respondent

*Protective Costs Application in Judicial Review Proceedings*

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<sup>2</sup> Counsel, Walkers (Bermuda) Limited

## **RULING of Richards J**

### **Introduction**

1. By Originating Motion dated 19<sup>th</sup> June 2025, the Applicant applies for judicial review of “*the decision of the Sub-Committee of the Judicial and Legal Services Committee (“JLSC”) dated 27 December 2024, as adopted by the Governor, dismissing the Applicant’s complaint against [a Magistrate]*”<sup>3</sup>. He does so pursuant to leave granted *ex parte* (in accordance with RSC Order 53, Rule 3(3)) by Subair Williams A/CJ, as enshrined in an Order of the same date.
2. The judicial review application seeks:
  - (i) an order quashing the decision of the JLSC/Governor;
  - (ii) a declaration that the decision was unlawful, irrational, procedurally improper and unfair;
  - (iii) an order mandating the JLSC or another appropriate body to reconsider the Applicant’s complaint “*in accordance with the principles of fairness and procedural propriety*”; and
  - (iv) costs.
3. In his Originating Motion, the Applicant also foreshadowed an intention to seek a Protective Costs Order (“PCO”). He subsequently filed a Summons seeking such an order. This ruling deals with that application. I apologise to the parties for the amount of time it has taken to produce. As they may know, I sit predominantly outside the civil division of this Court, but I can understand that they would have expected to receive a decision, especially on an interlocutory application such as this, some time ago.
4. At the start of the hearing of this application, I raised a concern I had about whether the Second Respondent possessed legal personality, enabling it properly to be joined as a party to these proceedings. In that regard I had taken note that previous litigation concerning the activities of the JLSC (i.e. *Junos (on behalf of Civil Justice Advocacy Group) v The Governor*

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<sup>3</sup> Since the Applicant’s complaint was not upheld and the decision upon it has not yet been found to be deficient, I have decided not to identify the Magistrate in this ruling.

*of Bermuda*<sup>4</sup>, (“***Junos***”) which was included in the bundle of authorities filed for this application) had named the Governor as the sole Respondent. The parties had not expected to have to address this issue, but they each offered brief oral submissions on it. The level of confidence they exhibited that the JLSC could properly be joined as a party varied slightly, but no one positively asserted that it could not. Furthermore, all agreed that the question could be addressed more fully at a later time. Although I did not direct the filing of any written submissions on this issue, the Applicant subsequently filed some. These argue, primarily by reference to *R (Datafin) v The Panel on Takeovers and Mergers*<sup>5</sup>, that the Second Respondent is a proper party to these proceedings. I am grateful to him for providing that authority to the Court, which is certainly relevant, but my preliminary view is that it does not provide a complete answer to my concern. If this matter proceeds, therefore, I shall invite further submissions on this issue.

5. The Applicant represented himself in these proceedings. He is not called to the Bar in Bermuda, but he is a qualified lawyer in a number of other jurisdictions. Although he modestly sought understanding at the start of his oral submissions (noting that English is not his first language), he is clearly a highly intelligent man, with a very good understanding of the relevant principles and case law. His arguments were sophisticated (which is not to say that I agreed with all of them) and, with the greatest of respect to Mr Johnston and Mr Taylor, I do not think that there was any significant inequality of arms in terms of the way the parties’ respective cases were presented to the Court, orally or in writing.

### **Relevant Background**

6. A number of Affidavits have been filed by all parties so far in these proceedings. In addition to setting out the relevant facts, many of them contain argument that one would typically expect to find elsewhere (i.e. in written submissions). The Applicant commented on this at paragraph 89 of his Affidavit dated 24<sup>th</sup> October 2025. His criticisms of the evidence filed

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<sup>4</sup> [2024] CA (Bda) 4 civ

<sup>5</sup> [1987] QB 815

on behalf of the Second Respondent are not entirely misplaced, but deeply ironic given that his own evidence has contained substantial argument from the start<sup>6</sup>.

7. The application for judicial review concerns a complaint that the Applicant made on 13<sup>th</sup> March 2021. That complaint related to the conduct of a Magistrate (“**the Magistrate**”), who had heard a trial in which the Applicant was charged with an offence of careless driving, contrary to section 37 of the Road Traffic Act 1947. At the conclusion of that trial (on 11<sup>th</sup> March 2021), he was convicted, fined and awarded demerit points. The Applicant appealed his conviction to the Supreme Court and then to the Court of Appeal. Both those appeals were unsuccessful. He subsequently sought to appeal to His Majesty in Council, but leave to do so was refused by both the Court of Appeal<sup>7</sup> and the Judicial Committee<sup>8</sup>.
8. In his Affidavit dated 19<sup>th</sup> June 2025, the Applicant summarises his complaint in the following terms (at paragraph 10):

*“i. First issue – Failure to Suppress Personal Bias:*

*On 11 March 2021, after convicting me, [the Magistrate] made remarks suggesting that my sentence was influenced by my decision to proceed to trial rather than plead guilty. This is evidenced by his response to the Crown counsel’s request for 10 demerit points: “No, I will give you 12 points for putting us through trial.” This inconsistency, compared to other cases handled the same day where guilty pleas received the exact penalties sought by the Crown, suggests personal bias. Additionally, the Magistrate granted me only seven days to appeal the judgment instead of the mandatory ten days, further compounding procedural irregularities.*

*ii. Second Issue – Denial of Due Process:*

*[The Magistrate] failed to address or engage with any of my substantive claims or evidence during the trial, including documented contradictions*

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<sup>6</sup> i.e. Affidavits 10<sup>th</sup> April 2025 and 19<sup>th</sup> June 2025

<sup>7</sup> [2025] CA (Bda) 25 crim

<sup>8</sup> <https://www.jcpc.uk/cases/jcpc-2025-0104>

*in the testimonies of Crown witnesses. This omission gives the impression that my Defense Statement and cross examinations were disregarded, leading to an unjust conviction. Examples include crown witnesses providing contradictory evidence about the accident's circumstances, including fabricated models and false statements later admitted in court. None of these critical points were reflected in the Magistrate's judgment.*

iii. *Third Issue – Focus on Irrelevant Matters:*

*Throughout the trial, [the Magistrate] concentrated on insubstantial issues such as my attire, posture, and gestures rather than the evidence at hand. He deemed the print on my hoodie offensive and repeatedly instructed me to change my stance, claiming it was “intimidating.” This undue focus on trivial matters detracted from the seriousness of the proceedings and the primary issue of adjudicating the case.*

iv. *Fourth Issue – Inconsistent Decisions:*

*After the close of evidence, I was denied the opportunity to deliver a closing speech because I was, as [the Magistrate] reasoned “not a member of the Bermuda bar.” This decision lacked legal justification and was inconsistent with the practise of other magistrates in Bermuda, who have allowed litigants in person to make closing speeches. Denying this right undermined my ability to fully present my defense and contributed to an unjust outcome.”*

9. A filtering subcommittee of the JLSC determined that the second of these issues was one for appeal and not something that could properly be considered as part of a complaint about the Magistrate's conduct. That decision was accepted to have been correct by the Applicant in an email he sent to the then Executive Officer of the First Respondent on 22<sup>nd</sup> November 2021. That email was sent in reply to one dated 19<sup>th</sup> November 2021, in which the Applicant was informed that the JLSC had decided to defer determination of the balance of his complaint until after his appeal had been decided (at that stage the pending appeal was to the

Supreme Court). The Applicant did not accept that that was the appropriate course, but the JLSC later (7<sup>th</sup> December 2021) confirmed its decision to defer.

10. On 1<sup>st</sup> April 2024, the Applicant wrote to the First Respondent (not the current Governor, but his predecessor) to “*express [his] deep concern and frustration regarding the handling of a complaint I filed with the Judicial Complaint Committee*”. It would seem that a communication the Applicant had sent to the Second Respondent, advising of the outcome of his appeal to the Supreme Court (which was dismissed on 6<sup>th</sup> December 2023), had gone astray. In any event, the Second Respondent wrote to the Applicant on 15<sup>th</sup> July 2024, advising that “*[n]ow that the Committee has learnt the result of your appeal, it is necessary for it to consider the complaint*”. That letter also pointed out, following the Court of Appeal judgment in *Junos*, that members of the JLSC “*are currently engaged in making amendments to the Protocol [governing judicial complaints] and it may be necessary to delay consideration of your complaint until those amendments have been made.*” The Complainant responded the same day. He noted the observations re *Junos* and articulated an awareness of its essential holding, but did not directly state whether, in his view, consideration of his complaint should be further delayed pending amendments to the Protocol. He wrote that he would be content for the matter to be decided based on the written submissions. There was further subsequent correspondence between the Applicant and the Second Respondent. In one such letter (dated 28<sup>th</sup> October 2024) the Applicant sought clarification “*regarding the implications of [Junos] on my complaint*”. He observed that “*Typically, judgments are not applied retroactively, and I would appreciate further explanation on how the committee intends to apply this judgment to my complaint. Specifically, I am interested in understanding whether the 2024 ruling will be applied retroactively...*” The Applicant noted the Second Respondent’s intention to invite the First Respondent to appoint a subcommittee to consider the merits of his complaint and did not seek to suggest that that should not happen.
11. A subcommittee of the Second Respondent (whose members were different from those of the filtering subcommittee) was indeed appointed to consider the merits of the complaint. The First Respondent subsequently accepted (by letter dated 23<sup>rd</sup> December 2024) the

subcommittee's recommendation to dismiss the complaint and that decision was communicated to the Applicant by the then Chairman of the Second Respondent (by letter dated 27<sup>th</sup> December 2024). By letter dated 6<sup>th</sup> January 2025, the Applicant was subsequently provided (at his request) with the analysis of the subcommittee's report.

12. In summary, the subcommittee advised the First Respondent to dismiss the complaint because (following the numbering in paragraph 8 above):

- (i) The decision to award 12 demerit points instead of 10 was a *“judicial decision, based on judicial reasoning”* and not *“instigated by any motivation within the rubric of judicial misconduct”*. The Magistrate was not bound by the position taken by Crown Counsel (who had sought only 10 points) and other cases to which the Applicant referred, in which only 10 points had been imposed, were all resolved by way of guilty plea. As I read the subcommittee analysis, they concluded that it would have been better if the Magistrate had explained that he was imposing more than 10 points because no discount was appropriate for a guilty plea, but that no misconduct was apparent.
- (ii) This ground was a matter for appeal, as determined by the filtering subcommittee (and not disputed by the Applicant).
- (iii) The Complainant had described this as a “minor issue” in his original complaint and accepted in his letter of 28<sup>th</sup> October 2024 that it *“may not, on its own, establish grounds for misconduct”*. The subcommittee considered that the Magistrate had been *“genuinely concerned about matters of courtroom decorum and made appropriate interventions and inquiries”*. The subcommittee found that the *“record supports the Magistrate’s claim that throughout the trial [the Applicant] was sometimes disrespectful – to counsel, a witness and the court – resulting in a somewhat charged and cautious environment”*. They determined that *“this ground does not substantiate any incident of judicial misconduct”*.

- (iv) Again, the subcommittee concluded that the Magistrate “*made a judicial decision [to refuse the Applicant a closing speech], and we do not detect any malice, resentment, or other extraneous motivation toward differential treatment...*”
13. By letter dated 7<sup>th</sup> January 2025, the Applicant sought reconsideration of his complaint. The Second Respondent wrote to the Applicant on 7<sup>th</sup> February 2025, indicating that the subcommittee had reviewed its report in juxtaposition with his letter and concluded that the former was “*sufficient, accurate, complete and fair*”.
14. On 11<sup>th</sup> June 2025, the Court of Appeal gave judgment<sup>9</sup> on the Appellant’s appeal against conviction. The ground of appeal that overlapped to some extent with the fourth limb of the complaint (i.e. denial of a closing speech) was the only one to succeed. Kawaley JA (as he then was) wrote that (paragraph 37):
- “...in my judgement an error of law was made because there was no discernible valid justification for refusing him an opportunity to address the Court in closing. The justification given at the time, that Mr Mizrachy was not counsel, was not satisfactory and may well reflect the fact that the magistrate was taken somewhat by surprise by an atypical closing speech request. The judge also erred in failing to find that an error of law occurred.”
- The Court of Appeal judgment records that “*no affirmative attack on the sentence was made*”. Ultimately the Court of Appeal declined to quash the Applicant’s conviction on the basis that “*no substantial miscarriage of justice has occurred*”.

### **This Application**

15. In the opening paragraph of his Skeleton Argument filed in support of this application, the Applicant stated that he is seeking an order that:
- “a) No adverse costs order shall be made against him if the judicial review application is unsuccessful, regardless of the outcome on individual issues or the overall result;

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<sup>9</sup> [2025] CA (Bda) 16 crim

- b) *If successful in whole or in part, he may recover his reasonable costs and disbursements, to be assessed in the ordinary way if not agreed;*
  - c) *The order should cover all aspects of the judicial review proceedings, including any appeals;*
  - d) *He should remain liable for his own disbursements and court fees regardless of outcome.”*
16. The Applicant is, therefore, seeking the greatest possible level of costs protection for himself, but no reciprocal limit on the costs that he may recover if successful. Both the First and Second Respondents take the position that the Court should refuse to make any such order.

### **The Law**

17. The parties are largely agreed as to the applicable law, referring to the same cases and differing instead on whether the criteria established therein are satisfied.
18. In *R (Child Poverty Action) v the Lord Chancellor’s Department*<sup>10</sup> (“**CPAG**”) Dyson J (as he then was), sitting in the English High Court (Administrative Court) said:
- “44. I conclude, therefore, that the necessary conditions for the making of a pre-emptive costs order in public interest challenge cases are that the court is satisfied that the issues raised are truly ones of general public importance, and that it has a sufficient appreciation of the merits of the claim that it can conclude that it is in the public interest to make the order. Unless the court can be so satisfied by short argument, it is unlikely to make the order in any event. Otherwise, there is a real risk that such applications would lead, in effect, to dress rehearsals of the substantive applications, which in my view would be undesirable. These necessary conditions are not, however, sufficient for the making of an order. The court must also have regard to the financial resources of the applicant and*

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<sup>10</sup> [1998] EWHC Admin 151

*respondent, and the amount of costs likely to be in issue. It will be more likely to make an order where the respondent clearly has a superior capacity to bear the costs of the proceedings than the applicant, and where it is satisfied that, unless the order is made, the applicant will probably discontinue the proceedings, and will be acting reasonably in so doing.”*

19. In R (Corner House Research) v the Secretary of State for Trade and Industry<sup>11</sup>, the English Court of Appeal expressed broad agreement with Dyson J’s approach. Identifying four “guidelines” in the paragraph quoted above, they sought to recast only the second. They “considered that Dyson J’s reference to the need to form a sufficient appreciation of the merits at the preliminary stage as a limiting factor was too restrictive.”<sup>12</sup> Writing for the unanimous court in Corner House, Brooke LJ said that “we consider that no PCO should be granted unless the judge considers that the application for judicial review has a real prospect of success and that it is in the public interest to make the order”. The Court set out the following “considerations” at paragraph 74:

- “1. A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that:
  - i) the issues raised are of general public importance;
  - ii) the public interest requires that those issues should be resolved;
  - iii) the applicant has no private interest in the outcome of the case;
  - iv) having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved it is fair and just to make the order;
  - v) if the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.
2. If those acting for the applicant are doing so pro bono this will be likely to enhance the merits of the application for a PCO.

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<sup>11</sup> [2005] EWCA Civ 192

<sup>12</sup> As Lords Sales and Hamblen put it in RDA Ltd v Christie [2023] UKPC 2 at paragraph 80.

3. *It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.”*
20. Dyson J and Brooke LJ both emphasised that the jurisdiction to make a PCO was one that should be exercised “*only in the most exceptional circumstances*”. As the latter observed, however, that statement “*does not assist in identifying those circumstances*”. In R (Compton) v Wiltshire Primary Care Trust<sup>13</sup> Waller and Smith LJJ agreed that “exceptionality” was not itself a criterion that had to be satisfied before a PCO could properly be made (see paragraphs 24 and 83), but Buxton LJ took a different view (see paragraph 64). For what it is worth, my own reading of Corner House (and CPAG) accords with the view of the majority in that respect. They also considered that “*the paragraphs in Corner House are not... to be read as statutory provisions, nor to be read in an over-restrictive way*” (per Waller LJ at paragraph 23; see also Smith LJ at paragraph 74).
21. This “flexible approach”, as the Applicant puts it, has been affirmed by the English Court of Appeal in cases including: R (Eley) v Secretary of State for Communities & Local Government<sup>14</sup>, R (Buglife) v Thurrock Thames Gateway Development Corporation<sup>15</sup>, Morgan v Hinton Organics<sup>16</sup> and Garner v Elmbridge Borough Council<sup>17</sup> In Bermuda this approach was followed by Kawaley CJ (as he then was) in BEST v the Minister of Home Affairs<sup>18</sup>. Having reviewed most of these decisions, His Lordship wrote:
- “9. *I am guided by these judicial pronouncements and reject any suggestion that the Corner House guidelines must be applied in a rigid and/or inflexible way. However, I accept entirely that the guidelines provide an appropriate framework within which to analyse the question of whether or not a PCO should be made.*”

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<sup>13</sup> [2008] EWCA Civ 749

<sup>14</sup> [2008] EWCA Civ 1632

<sup>15</sup> [2008] EWCA Civ 1209

<sup>16</sup> [2009] EWCA 107 Civ

<sup>17</sup> [2010] EWCA Civ 1006

<sup>18</sup> [2014] SC (Bda) 56 Com (sic)

22. It puzzles me somewhat that the appropriateness of a “flexible approach” was ever really doubted. Buxton LJ certainly adopted a more rigid reading of *Corner House* in *Compton*, but his approach must surely be regarded as something of an outlier. It seems to me that flexibility was inherent from the start and is perhaps most clearly articulated in subparagraph 3 of paragraph 74: “*It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above*”.
23. In argument the Applicant naturally emphasised the flexibility of the *Corner House* guidelines and suggested that the Respondents were encouraging me to treat them too rigidly. However, the Respondents did not deny that the case law says some flexibility is appropriate. They naturally emphasised instead that the test as a whole is a demanding one and that cases which meet it will be exceptional. Fundamentally, however, there was not intense disagreement as to the applicable law.

### **Discussion**

24. Despite that consensus, the parties could not really be any further apart on whether a PCO is justified in this case. The Applicant boldly describes the case for costs protection as “unassailable” and the Respondents contend that the application does not meet any of the relevant criteria. As will become apparent, I do not fully agree with either side.

### **Does the application for judicial review exhibit sufficient prospects of success?**

25. The Applicant contends that this threshold has already been satisfied because this Court (differently constituted) has granted him leave to seek judicial review. He refers to the decision of Fordham J in *R (APPG on Fair Business Banking) v the Financial Conduct Authority*<sup>19</sup>, which I am bound to say I have not found of assistance on this point. As Mr Johnston correctly observed in argument, it is concerned with the statutory requirements for a costs capping order – set out in sections 88 to 90 of the UK Criminal Justice and Courts Act 2015. It is a precondition of such an order that “*leave to apply for judicial review has been granted*” (section 88(3)). There is not formally such a precondition for a PCO at common law. What then is the threshold? Is it the same as for leave or is it higher? At times

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<sup>19</sup> [2023] EWHC 1662 (Admin)

Counsel for both Respondents appeared to contend that it is higher. I agree with them that the test as a whole is far more exacting, but do not agree as regards this component.

26. In CPAG, Dyson J said:

*“42. The second reason why, in my view, it will only be in an exceptional case that a pre-emptive costs order should be made is that it will rarely be possible to make a sufficient assessment of the merits of the claim at the interlocutory stage. I do not consider that the fact that leave to move to apply for judicial review is enough. Leave will often have been granted on the papers, or following an ex parte oral application. Even if the application is made at an inter partes hearing, the respondent may not at that stage place before the judge all the material or outline all the arguments that will eventually be considered by the court hearing the substantive application. It may ultimately transpire that the application is hopeless.”*

I suspect that some words may have been omitted from the second sentence in transcription, but it appears as though Dyson J thought that the test for leave to seek judicial review was not a sufficient measure of the merits of a case for these purposes. In other words that, before it would be appropriate to grant a PCO, the merits of a case would need to be more conspicuous than would be required merely to grant leave.

27. As we have seen, however, Corner House, sought to “recast” this part of Dyson J’s guidelines. The Court of Appeal’s “*real prospect of success*” standard (see paragraph 73) is surely indistinguishable from that to be applied when considering leave (to which Counsel did not refer). As the local Court of Appeal recently reiterated in *Lawrence & Johnson v PSC et al*<sup>20</sup>, the test to be applied on an application for leave to seek judicial review is not a high one (per Kawaley JA at paragraph 25):

*“The ex parte leave filter... is designed to filter out plainly unmeritorious attacks on administrative decisions. In National Bank of Anguilla [2025] UKPC 14, Lord Reed and Lady Rose opined as follows:*

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<sup>20</sup> [2025] CA (Bda) 14 Civ

*“The test to be applied, both at first instance and on appeal, has been explained many times. It will suffice to cite two authorities. In Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, Lord Bingham of Cornhill and Lord Walker of Gestingthorpe stated at para 14:*

*“(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy”.*

*More recently, in Attorney General of Trinidad and Tobago v Ayers Caesar [2019] UKPC 44, Lord Sales, giving the judgment of the majority of the Board, said at para 2:*

*“The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether [the applicant for judicial review] has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage.”*

*As Lord Sales said, this is a low threshold. It operates as a filter to exclude cases which are unarguable.”<sup>21</sup>*

28. It puzzles me slightly that the case law has not expressly acknowledged that the leave test and this component of the PCO test are the same, but it appears to me that they must be. To the extent that Dyson J preferred an elevated threshold in CPAG, that view has not survived

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<sup>21</sup> I have omitted emphasis applied by Kawaley JA and applied my own.

Corner House<sup>22</sup>. It may even be that Brooke LJ mentioned this requirement in his paragraph 73, instead of including it amongst the considerations listed in paragraph 74, because it will have to be shown at the leave stage in a judicial review (as the majority of cases in which PCOs are sought will be).

29. In reality the Respondents are so critical of the Applicant's case that, had I asked them directly whether he ought to have been granted leave (as perhaps I should have done during the hearing), I think they would have been compelled to answer that he should not. Leave was of course granted in their absence, but neither of them has applied to set it aside, as I believe could have been done<sup>23</sup>. I agree with the Applicant that, in the absence of such applications, I should not allow myself to be drawn into further evaluation of the strength of his claim at this stage. He must have satisfied this Court (differently constituted) that he has a "*realistic prospect of success*" and he should not be required, for present purposes, to demonstrate a greater likelihood that he will prevail. He has, therefore, satisfied the Corner House requirement of a "*real prospect of success*".

30. However, in my judgment, the grant of leave is properly of no greater significance. Understandably perhaps, the fact that he has leave has become something of a refrain for the Applicant. For example, in his Affidavit dated 24<sup>th</sup> October 2025, he stated that (paragraph 35):

*"The grant of leave is a judicial determination that my case is arguable and has a realistic prospect of success. This finding significantly bolsters the 'public importance' criterion of my PCO application".*

I do not agree. The test for leave does not require a potential litigant to satisfy any of the other factors that the Court must consider on a PCO application. A case that obviously lacks a realistic prospect of success, may be unlikely to raise questions of general public importance, but plenty of perfectly meritorious judicial review applications are of importance only to those who bring them.

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<sup>22</sup> See also Lords Sales and Hamblen in RDA Ltd v Christie [2023] UKPC 2 at paragraph 80

<sup>23</sup> If it had, I would likely have explored the possibility of the matter going back to the judge who granted leave, so that I did not find myself effectively sitting in review of her decision.

31. If this matter proceeds to a full hearing, the Respondents will be fully entitled to rely on their many criticisms of the foundations of the Applicant's case, whether or not they seek to reopen the question of leave. He is perhaps fortunate to have had the benefit of seeing now how it is that they are likely to defend this action.

Are the issues raised of general public importance and does the public interest require them to be resolved?

32. It is necessary to spend some time on what is meant by the phrase "*general public importance*". In argument Mr Taylor referred me to Compton:

*"59. By imposing a requirement of general public importance the court in Corner House was plainly and intentionally setting a demanding standard. I agree that the test will require interpretation, but on any view it sets limits outside of which a PCO cannot be made. In particular, it is quite inconsistent with a requirement of general public importance that a PCO should be made simply on the ground that the matters in issue are of importance to a section of the public."*

33. However, I am wary of relying on this passage because Buxton LJ (who wrote it) was in the minority in Compton and the majority's views clearly prevailed, not only then, but in the subsequent cases. Smith LJ (with whom Waller LJ agreed) expressed the following views on this point (emphases added):

*"75. First, there is no absolute standard by which to define what amounts to an issue of general public importance. Second, there are degrees to which the requirement may be satisfied; some issues may be of the first rank of general public importance, others of lesser rank although still of general public importance. Third, making the judgment is an exercise in which two judges might legitimately reach a different view without either being wrong."*

76. *In my view, Corner House does not define what is an issue of general public importance. It provides some examples of the type of issue which will be of general public importance... but it does not seek to define or limit the field to issues of that nature. In particular, Corner House does not say that only issues of national importance will qualify. It does not (and could not) say how publicly important the issues have to be or how general the public importance has to be.*
77. *During the hearing, there was some discussion about the meaning of the word 'general' in the context of 'general public importance'. As Buxton LJ says, it must add something to mere 'public importance'. In some cases, the answer is easy. For example, if the case will clarify the true construction of a statutory provision which applies to and potentially affects the whole population, the issues are of general public importance. But if the issue is of public importance and affects only a section of the population, it does not in my view follow that it is not of general public importance, although it will not be in the first rank of general public importance... It seems to me that a case may raise issues of general public importance even though only a small group of people will be directly affected by the decision. A much larger section of the public may be indirectly affected by the outcome. Because it is impossible to define what amounts to an issue of general public importance, the question of importance must be left to the evaluation of the judge without restrictive rules as to what is important and what is general.*
34. I am also conscious that, in Corner House, the two questions in the above heading were posed separately (i.e. 74.1(i) and (ii)). However, I think it clear that the case law has rejected any rigid compartmentalisation of these questions (such as was preferred by Buxton LJ – see paragraph 56 of Compton) and which does not seem to me to be realistic. I note too that Kawaley CJ dealt with them together in *BEST* (see paragraph 10) and the parties largely did so before me.

35. The Applicant says that this case raises five interconnected issues of “*undeniable general public importance*”, which are:
- (i) Judicial accountability;
  - (ii) Constitutional governance;
  - (iii) the Rule of Law;
  - (iv) Procedural fairness; and
  - (v) Authoritative judicial guidance on how complaints should be handled post-*Junos*.
36. I would agree that, in the abstract, these are issues of general public importance. The real question, it seems to me, is whether this case actually presents such issues for decision.
37. I agree with the Applicant that the nature of the proceedings before the Magistrate about whom he complained is not dispositive. Clearly the charge the Applicant faced was not of the greatest seriousness, but that cannot determine whether his complaint about the Magistrate’s conduct was well-founded or, more importantly, whether the process by which it was adjudicated was a proper one. To the extent that the Respondents have relied upon the minor nature of the underlying proceedings (which is not, I think, as much as the Applicant suggests), that reliance is, in my judgment, misplaced. I also think that, in suggesting that the Applicant no longer cares about the substance of his complaint, as they did during the hearing, the Respondents are mistaken. He is seeking that his complaint be reconsidered. He hopes that, if it is, a different outcome will be reached. At present he is focused on questions of procedure rather than substance, because he believes that they will lead to the conclusion that the complaint must be reconsidered.
38. However, the Applicant is not seeking to advance criticisms of the regime for determining judicial complaints that go beyond *Junos*. On the contrary, he relies upon *Junos* for the proposition that the Protocol under which his complaint was decided was defective. This is ironic given that he was, at an earlier stage (28<sup>th</sup> October 2024), seemingly concerned by the possibility that *Junos* might be applied retroactively to his complaint. Now he suggests that his complaint must have been mishandled because it was decided under the pre-*Junos*

Protocol. The problem with this argument is that *Junos* required modification of the Protocol in limited and irrelevant ways. It also concerned the application of the Protocol to a different type of judicial officer<sup>24</sup>.

39. In *Junos* Smellie JA (with whom Gloster JA and Simmons AJA agreed) held that:

*“...it is not safe to draw the inference that the Governor, in the absence of express provision in the Constitution to that effect, has a power of ongoing disciplinary control over the Judges of the Superior Courts for matters which could not lead to removal from office. On the contrary, the history teaches us that, in the absence of a constitutional or other statutory provision which itself must reflect and respect the constitutional framework, such matters must be left to be resolved within the ranks of the senior judiciary itself.”*<sup>25</sup>

...

*“It is perhaps also objectionable for the reasons mentioned in the protocol itself that the governor should be vested with ongoing disciplinary control over the Magistracy but that is what section 89 of the constitution clearly States and at least the provision is tempered by the fact that the power can only be exercised in consultation with the Chief Justice.”*<sup>26</sup>

...

*“there is no basis for doubting the validity of [the JLSC’s] existence as a standing body of advisors convened to advise the Governor on disciplinary matters involving the judiciary”*<sup>27</sup>

...

*“while the Protocol is not strictly “unlawful”, it requires redrafting... in order to remove and/or amend as appropriate the provisions relating to the purported “summary dismissal of complaints” by the Complaints (filtering) Sub-committee and to confirm the purely advisory role of the JLSC.”*<sup>28</sup>

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<sup>24</sup> i.e. one whose tenure is governed by section 74 of the Constitution, instead of section 89

<sup>25</sup> Paragraph 37

<sup>26</sup> Paragraph 40

<sup>27</sup> Paragraph 54 (i)

<sup>28</sup> Paragraph 54 (iii)

40. According to the evidence filed, the Protocol was amended in two ways as a result. First, to remove the suggestion that the Governor could exercise disciplinary control over those judicial officers whose tenure is governed by section 74 of the Constitution in respect of matters not justifying their removal. Secondly, to clarify that a filtering subcommittee was not empowered conclusively to dismiss a complaint, but only to advise (the Governor or Chief Justice, as appropriate).
41. As regards the first amendment, the Applicant argues that confirmation that the Constitution entrusts the disciplinary control he was seeking to invoke (i.e. over a Magistrate pursuant to section 89) exclusively to the Governor strengthens his case. He points out that *Junos* suggested that that authority could not be delegated to the Second Respondent. To my mind, however, *Junos* makes it clear that the Governor was entitled to take advice in the performance of her functions under section 89 and that, although she was required by that section to act after consultation with the Chief Justice, that does not mean that there is anything inherently objectionable in her taking advice from a standing body of advisers such as the JLSC. In my judgment, the propriety of the Governor acting in that way is a question of general public importance, but it is one that was answered by *Junos*. The question whether the decision taken by the Governor in respect of the Applicant's complaint conformed with *Junos* may be an important question (to the Applicant and perhaps to the Magistrate), but not one of general public importance.
42. As regards the second amendment, the Applicant argues as follows: "*My complaint was processed under a protocol that purported to allow the JLSC filtering sub-committee to summarily dismiss complaints - precisely the delegation the Court of Appeal found impermissible. The fact that my complaint ultimately went forward to the full Sub-Committee rather than being summarily dismissed does not cure the constitutional defect in the process under which it was handled.*" I do not see how this can possibly be right. The Applicant has accepted that the only part of his complaint that was summarily dismissed was properly a matter for appeal. Plainly, in my judgment, that was correct. Again, it was of general public importance for the Court of Appeal to declare that it was not permissible for a filtering

subcommittee summarily to dismiss complaints. That having been established, I doubt whether the summary dismissal of the *whole* of the Applicant's complaint by a filtering subcommittee (had it occurred) could properly be said to be a matter of general public importance. In circumstances where the Protocol has been revised to prevent that from happening in the future, it would be important to the Applicant, but not to the general public. Given that the substance of the Applicant's complaint was fully considered on its merits, he has not persuaded me that this amendment to the Protocol assists him on this application.

43. The Applicant has also sought to argue that the Second Respondent improperly proceeded with his complaint in breach of a self-imposed moratorium while the Protocol was being revised. In this regard, he refers to the Second Respondent's letter of 15<sup>th</sup> July 2024 in which it was said that "*it may be necessary to delay consideration of your complaint until those amendments [to the Protocol] have been made.*" He has also put forward an email sent to him on behalf of the Second Respondent on 27<sup>th</sup> February 2025, in reference to another judicial complaint. This said that the "*JLSC is presently in the process of finalizing the amended JLSC protocol, after which complaints will be further reviewed and addressed*". The Applicant characterises this as an "*admission of a general moratorium*". I do not agree. The first communication clearly left open the possibility that a further delay in consideration of the complaint with which I am concerned might not be necessary. The fact that consideration of his other complaint (and potentially others) had to be delayed is not inconsistent with the approach taken on this complaint. Those complaints may have raised issues to which the pending amendments to the Protocol were relevant. For the reasons I have given, I am satisfied that this complaint was not in that category. Although this is not dispositive, I also note that the Applicant never asked for consideration of his complaint to be delayed pending the amendments to the Protocol. He engaged in extensive correspondence with the Second Respondent before and after 15<sup>th</sup> July 2024. His desire for consideration of the complaint to proceed is very clearly apparent from that correspondence. He may say that he did not know how the Protocol was to be amended, but the judgment in *Junos* was publicly available for his consideration and the Second Respondent had clearly referenced it in the letter of 15<sup>th</sup> July 2024 (indeed I think it is clear that he had read and understood the judgment).

44. I am therefore satisfied that, although this judicial review may raise questions that are important to the Applicant, his attempts to characterise them as points of general public importance, which the public interest requires be resolved are misconceived.

Does the Applicant have a private interest in the outcome of the application for judicial review?

45. The Applicant accepts that he has some interest in the outcome of this judicial review. I do not understand the Respondents to say that any personal interest is disqualifying, but if I am wrong about that, it is clear to me that the “flexible approach” to the *Corner House* considerations does not require such a reading. As the Applicant points out, he is seeking only public law remedies (and not, for example, damages).
46. I note that “*the nature and extent of a claimant’s personal interest is simply one of the factors to be taken into account in deciding whether, in all the circumstances, applying the Corner House principles, it would be just to make a PCO*”<sup>29</sup>. In my judgment, this application fails due to a lack of general public importance and not due to an excess of private interest.

Having regard to the financial resources of the parties, is it fair and just to make a PCO?

47. The Applicant asserts that he is unemployed in Bermuda and has no regular source of income, be that from legal practice or any other form of employment (anywhere). He and his family of five are reliant upon his wife’s income, which is modest. In support of these assertions, he has supplied no meaningful financial disclosure. The Respondents criticise him for not producing bank statements, payslips or sworn evidence from his spouse. They also point to the determination with which he has pursued other proceedings.
48. The Applicant relies on the fact that his assertions of limited financial resources have not been contradicted, but it is not clear to me how it is that he believes the Respondents would be able to access his private financial information. He also points out that the appeals he has

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<sup>29</sup> Per Sir Anthony Clarke MR in *Eley* at paragraph 10.

pursued were relatively inexpensive to file and did not, in practice, expose him to the risk of an adverse costs order, let alone one as significant as might be made in this case.

49. I see no positive reason to suppose that the Applicant has concealed significant financial resources. Nevertheless, if the success or failure of this application had depended on him satisfying me that his financial position is as set out in his Affidavits, I may have concluded that his failure to support those assertions with any documentation is problematic. As it is, I do not find it necessary conclusively to resolve this point.

If a PCO is not made, will the Applicant probably and reasonably discontinue the proceedings?

50. I do not know whether the Applicant will discontinue these proceedings in the absence of costs protection, but I frankly doubt that he will. He has certainly demonstrated considerable commitment to challenging adverse decisions in the past. In his Affidavit dated 24<sup>th</sup> October 2025, the Applicant said that “...*my prior litigation history supports my PCO application: it shows that I am willing to pursue meritorious claims competently and persistently, but only where the financial risks are manageable*”. The Applicant may continue to believe that his appeals against his conviction for careless driving were meritorious, but the fact that the Supreme Court and Court of Appeal did not quash it and the Privy Council declined to grant leave (since the Affidavit was sworn) clearly suggests otherwise. That said, I accept that the Applicant’s costs exposure in those appeals was minimal, compared with the position in these proceedings. An adverse costs award here could be many times the fine imposed for careless driving and the filing fees associated with the appeals.
51. The Applicant has also been somewhat inconsistent about whether he will discontinue if a PCO is not granted. For example, in his Affidavit dated 29<sup>th</sup> September 2025, he relevantly expressed himself in several different ways:

| Paragraph | Quote (emphases added)                                                                 |
|-----------|----------------------------------------------------------------------------------------|
| 8         | “without cost protection, I <u>would be unable to continue</u> with these proceedings” |

|       |                                                                                                                                                                            |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9     | <i>“The prospect of an adverse costs order would effectively deny me access to justice and <u>might compel me to abandon</u> what I believe to be a meritorious claim”</i> |
| 32    | <i>“without cost protection, I <u>will be compelled to consider discontinuance</u> of these proceedings”</i>                                                               |
| 59(e) | <i>“I will be <u>compelled to discontinue</u> without costs protection”</i>                                                                                                |

52. These inconsistencies are interesting. Having heard the precision with which the Applicant is able to express himself in English, I am satisfied that they are not the result of any difficulties he may have with a language that is not his first.
53. I noted with interest that, in dealing with this point, during the hearing, the Applicant conceded that the issues in this case are unlikely to be litigated by any other party. I have little difficulty in accepting that that observation is true, but if the matter genuinely raised questions of “*exceptional public importance*” one might expect someone else to be interested.
54. I am far from sure that the Applicant will discontinue these proceedings without a PCO, but that would be setting too high a standard and, adopting a flexible approach, I conclude that the likelihood of his doing so is sufficient to say that he ought not properly to be denied a PCO on this basis.

### **Conclusion**

55. This ruling is probably too long. I am conscious that the case law suggests that these decisions should be capable of being taken swiftly and efficiently and I fear that I have been neither. However, it may be that a successful PCO application can more easily be decided shortly because the truly exceptional case that justifies one will stand out. An Applicant who is denied a PCO may have to abandon his claim as a result and therefore deserves a more detailed explanation.

56. Ultimately, I conclude that, even applying a flexible approach, the Applicant has failed to demonstrate that this case satisfies the Corner House considerations set out in paragraphs 74.1(i) and (ii) of that judgment. Stepping back and asking myself whether, in light of all those considerations, it is fair and just to make the order sought, I am satisfied that it is not appropriate to exercise my discretion in favour of granting any form of PCO.
57. Unless any party seeks to be heard on the costs of this application, the Court is not presently minded to make any order.

Dated this 9<sup>th</sup> day of September 2026

  
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THE HONOURABLE MR JUSTICE ALAN RICHARDS  
PUISNE JUDGE